Pemco Die Casting Corporation *and* Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, Local #6-0547. Case 7–CA–46497

January 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has withdrawn its answer to the complaint. Upon a charge filed by the Union on August 12, 2003, the General Counsel issued the complaint on September 26, 2003, against Pemco Die Casting Corporation, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent filed an answer to the complaint on October 14, 2003. On December 5, 2003, however, the Respondent withdrew its answer.

On December 12, 2003, the General Counsel filed a Motion for Default Judgment with the Board. On December 17, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed by October 10, 2003, all the allegations in the complaint will be considered admitted. On October 14, 2003, the Respondent filed an answer to the complaint. However, by letter dated December 5, 2003, to the Regional Director for Region 7, the Respondent withdrew its answer. The withdrawal of an answer has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be true.[1]

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, we grant the General Counsel's Motion for Default Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with offices and a place of business in Bridgman, Michigan, has been engaged in the manufacture and nonretail sale of die cast components for the automotive, truck, office furniture, and telecommunications industries.

During the calendar year ending December 31, 2002, in the course of its business operations described above, the Respondent sold and shipped products valued in excess of $50,000 directly from its facility to customers located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, Local #6-0547, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act, and agents of the Respondent within the meaning of Section 2(13) of the Act:

Terry Allen	Chief Executive Officer
Amy Briggs	Human Resources Director

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of the Respondent at its Bridgman, Michigan plant, including tool room employees, truck drivers, janitors and regular part-time employees, but excluding professional employees, draftsmen, office clerical employees, time-

[2] The charge indicates that the Respondent is involved in bankruptcy proceedings. It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. See id., and cases cited therein; *NLRB v. 15th Avenue Iron Works, Inc.*, 964 F.2d 1336, 1337 (2d Cir. 1992). Accord: *Aherns Aircraft, Inc. v. NLRB*, 703 F.2d 23 (1st Cir. 1983).

keepers, guards and supervisors as defined in the Labor-Management Relations Act of 1947, as amended, in accordance with the certification of the National Labor Relations Board in Case No. 7–RC–9601.

Since about the last 30 years, the Charging Party has been the certified exclusive collective-bargaining representative of the unit and since then it has been recognized as such by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from August 19, 2000, to June 28, 2003.

On June 25, 2003, the Respondent and the Charging Party entered into a written agreement to extend the most recent collective-bargaining agreement for a period of 30 calendar days, and further stipulated that the extension would continue in full force and effect if no successor collective-bargaining agreement was reached by that time, unless either party issued a 7-day notice of their intent to terminate said agreement.

At all material times based upon Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the unit.

About July 28, 2003, the Respondent, by its agent, Terry Allen, by an e-mail announcement sent to the Charging Party, unilaterally eliminated the paid vacation benefit for unit employees set forth in article X of the collective-bargaining agreement described above, and the bonus hours benefit, and since that time has refused to pay unit employees for their accrued vacation pay or bonus hours.

Since about August 5, 2003, the Respondent has failed and refused to compensate employees for accrued safety bucks.

Since about August 5, 2003, the Respondent has unilaterally operated in disregard of the contractual prohibition against supervisors performing bargaining unit work set forth in article VI, section 11 of the collective-bargaining agreement.

About August 8, 2003, the Respondent began laying off unit employees without regard to their seniority, superseniority, or their contractual right to bump employees with lower seniority as set forth in article VI of the collective-bargaining agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Charging Party.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) since about July 28, 2003, by failing to continue in effect all of the terms and conditions of the collective-bargaining agreement by eliminating the contractual paid vacation benefit and the bonus hours benefit and by failing and refusing to pay unit employees for accrued vacation pay and bonus hours, we shall order the Respondent to comply with the terms and conditions of the collective-bargaining agreement and any automatic renewal or extension of it, and to make whole unit employees for any loss of earnings and other benefits they have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing its existing practice, about August 5, 2003, of compensating employees for accrued safety bucks, we shall order the Respondent to rescind this unilateral change and to make whole unit employees for any loss of eamings and other benefits they have suffered as a result of the Respondent's unlawful conduct, in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by, since about August 5, 2003, assigning unit work to supervisors in contravention of article VI, section 11 of the collective-bargaining agreement and, since about August 8, 2003, laying off unit employees in contravention of article VI of the collective-bargaining agreement, we shall order the Respondent to make the unit employees whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

Because the Respondent has apparently ceased operations, we shall not order it to offer the unlawfully laid-off unit employees reinstatement. To further effectuate the policies of the Act, however, in the event the Respondent resumes the same or similar business operations, we shall require the Respondent, within 14 days thereafter, to offer those unit employees who were laid off as a result of the Respondent's failure to comply with article VI of the collective-bargaining agreement reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

Finally, in view of the fact that the Respondent's Bridgman facility is apparently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of unit employees employed by the Respondent since July 28, 2003, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Pemco Die Casting Corporation, Bridgman, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to honor all of the terms and conditions of the collective-bargaining agreement with Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, Local #6-0547, by eliminating the paid vacation benefit and the bonus hours benefit, by failing to pay unit employees accrued vacation pay and bonus hours, by laying off unit employees in contravention of the seniority provisions of the agreement, and by assigning unit work to supervisors. The appropriate unit is:

> All production and maintenance employees of the Respondent at its Bridgman, Michigan plant, including tool room employees, truck drivers, janitors and regular part-time employees, but excluding professional employees, draftsmen, office clerical employees, timekeepers, guards and supervisors as defined in the Labor-Management Relations Act of 1947, as amended, in accordance with the certification of the National Labor Relations Board in Case No. 7–RC–9601.

(b) Failing and refusing to bargain with the Union, as the exclusive bargaining representative of the unit employees, by unilaterally failing, contrary to its past practice, to pay unit employees for accrued safety bucks.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor and apply all of the terms of the collective-bargaining agreement, and any automatic renewal or extension of it.

(b) Make whole the unit employees for any loss of wages and other benefits they may have suffered as a result of its failure to abide by the collective-bargaining agreement, with interest, as set forth in the remedy section of this decision.

(c) Rescind the unilateral change in its practice of paying unit employees accrued safety bucks, and make whole the unit employees for any loss of wages and other benefits they may have suffered as a result of the Respondent's unilateral failure, since about August 5, 2003, to pay unit employees accrued safety bucks, with interest, as set forth in the remedy section of this decision.

(d) In the event the Respondent resumes the same or similar business operations, within 14 days thereafter, offer those unit employees who were laid off as a result of the Respondent's failure and refusal to comply with the seniority provisions of the collective-bargaining agreement or as a result of its assignment of unit work to supervisors in violation of the collective-bargaining agreement reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs, and within 3 days thereafter notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, duplicate and mail, at its own expense, and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix"[3] to the Union and to all unit employees employed at the Bridgman facility on or after July 28, 2003.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judg-

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 30, 2004

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Robert J. Battista, Chairman

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Wilma B. Liebman, Member

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to honor the terms and conditions of our collective-bargaining agreement with Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, Local #6-0547, by eliminating the paid vacation benefit and the bonus hours benefit, by failing to pay unit employees accrued vacation pay and bonus hours, by laying off unit employees in contravention of the seniority provisions of the agreement, or by assigning unit work to supervisors. The appropriate unit is:

All production and maintenance employees of the Respondent at its Bridgman, Michigan plant, including tool room employees, truck drivers, janitors and regular part-time employees, but excluding professional employees, draftsmen, office clerical employees, timekeepers, guards and supervisors as defined in the Labor-Management Relations Act of 1947, as amended, in accordance with the certification of the National Labor Relations Board in Case No. 7–RC–9601.

WE WILL NOT fail and refuse to bargain with the Union, as the exclusive bargaining representative of the unit employees, by unilaterally failing, contrary to our past practice, to pay unit employees for accrued safety bucks.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor and apply all of the terms of our collective-bargaining agreement with Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL–CIO, Local #6-0547, and any automatic renewal or extension of it.

WE WILL make whole unit employees for any loss of wages and other benefits they may have suffered as a result of our failure to abide by the collective-bargaining agreement, with interest.

WE WILL rescind the unilateral change in our practice of paying unit employees accrued safety bucks, and WE WILL make whole unit employees for any loss of wages and other benefits they may have suffered as a result of our failure, since August 5, 2003, to pay accrued safety bucks, with interest.

WE WILL, in the event we resume the same or similar business operations, within 14 days thereafter, offer those unit employees who were laid off as a result of our failure and refusal to comply with the seniority provisions of the collective-bargaining agreement or as a result of our assignment of unit work to supervisors in violation of the collective-bargaining agreement, reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful layoffs of our unit employees and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the layoffs will not be used against them in any way.

PEMCO DIE CASTING CORPORATION

ment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."